EDWARD SCOTT, *Gent. Administrator of* Thomas Scott, *his Brother, deceas'd,* } APPEL'

RICHARD HILTON, *Executor of* John Hilton, *Clerk (his Father, deceas'd,) who Married* Winifred Scott, *the* Appellant's *Sister,* — — — } RESPOND'

The Appellant's CASE.

The APPEAL is, touching a BOND pretended to be made, in a very Unusual Manner, by the *Appellant*'s Brother, to the *Respondent*'s Father, in these Words following, (*Viz.*)

KNOW *all Men by these Presents,* **That I** Thomas Scott, **of** Great Barr, **in the Parish of** Aldridge, **and County of** Stafford, **Gent.** *Do Owe and am Indebted unto* John Hilton, *of* Great Barr, *in the Parish of* Aldridge, *and County of* Stafford *aforesaid,* Clerk, **the full and just Summ of Two Hundred Pounds of good and lawful Money of** England, **to be paid to the said** John Hilton, *his Heirs or Assigns,* **with due Interest for the same**; *and also Twenty Pounds more of like lawful* English *Money, to be paid to the said* John Hilton, *his Heirs or Assigns, in lieu of certain Goods and Cattle due to him the said* John Hilton, *but without any Interest for the said Twenty Pounds. And forasmuch as the said Money, Goods and Cattle, were by my Dear Father* William Scott, *of* Great Barr *aforesaid, designed and intended for my Loving Sister* Winifred, *late Wife to the said* John Hilton *aforesaid*; *And I the said* Thomas Scott, *having, for Causes to my self best known, hitherto with-held and kept back all the said Moneys, Goods and Cattle, not daring to intrust them in the Hands of my Loving Sister, nor yet of her Husband* John Hilton *aforesaid*; *And now being fully satisfied, notwithstanding the Death of my Dear Sister* Winifred, *late Wife to the said* John Hilton *aforesaid, that of Right, all the said Moneys, Goods and Cattle afore-mention'd, doth and ought to belong unto him the said* John Hilton; *I therefore the said* Thomas Scott, *of* Great Barr *above-mention'd,* **Do, by these Presents, firmly Tie, Bind, and Oblige my Heirs, Executors, Administrators and Assigns, and every of them, in the Penal Summ of One Thousand Pounds,** *of good and lawful* English *Money,* **for the true and just Payment** *of the above-mention'd Two Hundred Pounds, with Lawful Interest for the same, and Twenty Pounds without Interest; All which Money to be paid to the said* John Hilton, *his Heirs, or Assigns,* **within Six Months after my Decease, from the Day of the Date hereof:** *And then this present* **Thousand Pound** *Obligation shall be Void, and of none Effect, or else to be and remain in full Force and Virtue.* **Witness this my own Hand and Seal,** *this 16th Day of* August, *in the 18th Year of the Reign of our Sovereign Lord,* Charles the II^d. *by the Grace of God, of* England, Scotland, France, *and* Ireland, *King, Defender of the Faith,* &c. *Annoq; Dom.* 1667.

Sealed and Subscribed in the Presence of us,
Richard Pretty,
William Lucas,
The Mark [*A*] of *Anne Brockhouse.*

THO. SCOTT.

'Tis in Proof in the Cause,

THAT the *Respondent*'s Father Married *Winifred*, against the Liking, and to the great Displeasure of her Friends; That she Liv'd but Eleven Months after her Marriage; And that she Died *without Issue*, Twenty Years before the Date of the *pretended Bond*; That her Portion was fully Paid, and a *Discharge* given under her Husband's Hand for the same: And it was not at all probable that *Thomas Scott*, her Brother, should give her Husband more, apprehending, from the greatest Instances to be given in such a Case, *That his Ill Usage of her, was the Occasion of her Death*; Or that the said *Thomas Scott*, being a Man of the greatest Probity and Discretion, should by the space of Thirty Years and upwards keep this *pretended Bond* conceal'd in his Custody, and leave it to raise Discord in his Family after his Death.

That *Tho. Scott* used to say, He had paid his Sister *Winifred*'s Portion to a Farthing, and often express'd his Trouble and Resentment for her Ill Usage by her said Husband.

That *Richard Pretty*, the first Subscribing Witness to the Bond in question, was on the Day the same bears Date near Twenty Miles distant from the Place where the *Respondent* pretends it was Seal'd; and that at that very time there was a great Difference (occasion'd by a Law-Suit) between the Obligor *Scott* and the said *Pretty*.

NOTE, All the pretended Witnesses to the Bond in question were Dead several Years before *Tho. Scott* the Obligor Died, or before the pretended Bond was heard of.

That the Name *William Lucas*, set to the Bond as a Witness, resembled the Hand of *William Lucas* Senior; And the *Respondent*, at the first Tryal, applied his Proof to prove his Hand: But it afterwards appearing that he Died Three Years before the Bond bears Date, some remarkable Letters therein were much Altered, and all drawn over with fresh Ink, before the Second Tryal, to make it more like the Son's Hand, who was alive at the time of the Date of the said pretended Bond.

That the Words (*Sealed and Subscribed,*) as Attested by the pretended Witnesses to the Bond in question, (although unusual and improper) are like what the *Respondent* himself has used in other Instances, particularly in two Bonds wherein himself was Bound, which had been unpaid near twenty Years; till being produced as Evidence against the *Respondent* at the First Tryal, they were paid off and taken up before the Second.

And as to another Bond, pretended to be made by *Tho. Scott* to one *Doleman*, in 1694. in the like Phrase with that in question, and sent in a Letter of the same Hand, Seal, and Ink, Dated *August* 22^d. 1699. to one Mr. *Fox*, to be by him conceal'd till after *Thomas Scott*'s Death, as the Letter imports: (*A Copy of which* Bond *is Indors'd on the Back-side of this* CASE.)

That soon after the Death of *Thomas Scott*, the *Respondent* went to the said *Fox*, (being about Ten Miles from him) to Examine a Copy of the Bond in question: And there is good Evidence that this Bond and Letter are of the *Respondent*'s own Writing, and that *Tho. Scott* was so Old and Infirm that he could not Write at all, or so much as hold a Pen in his Hand at the time when that Letter is Dated; which yet is Signed, *Tho. Scott*, exactly like, and Wrote as well as the Bond in question.

That the *Respondent* has been in Different Stories how he came by his Bond, saying sometimes, That he found it amongst his Father's Writings; and sometimes, that *Tho. Scott* gave it him, in 1694. being Ten Years after his Father *Hilton*'s Death.

In 1700. The *Respondent* having brought an Action upon the Bond in question, in the Court of *Common Pleas*, and laid his Action in *Warwickshire*; And thereupon obtained a Verdict: The Court of *Common Pleas* being not Satisfy'd with it, Directed a New Tryal. Upon which Second Tryal,

Upon Proof of the before-mention'd, and many other Matters and Circumstances, (after a long Tryal of Nine Hours at *Warwick Assizes*, in *August* 1701. by a Special *Jury* of Gentlemen of Quality in that County, and upon a Full Hearing of Both Sides) the *Respondent* (having some Notice that the Jury had given a Privy Verdict against him) suffer'd himself to be Non-suit.

Which JURY of *Warwickshire* were as follow:
Sir *William Wheeler*, Bar.
Thomas Milward, Esq;
Robert Harvey, Esq;
Aston Ingram, Esq;
Samuel Tayler, Esq;
William Westley, Esq;
William Smith, Esq;
Gilbert Gunter, Gent.
William Murcott, Gent.
William Mulliner, Gent.
Thomas Benskins, Gent. and
William Greene, Gent.

Notwithstanding which, the *Respondent* brought another Action, and laid it in *Shropshire*, altho' *Staffordshire* be the adjacent County to *Warwickshire*, and the proper County wherein the Cause of Action arose, and the Reputation of the Parties and Witnesses were only known; And the *Appellant* having brought his Bill in *Chancery*, to have a Discovery of the Circumstances relating to the *pretended Bond*, and to have it Deliver'd up to be Cancell'd. To which Bill the *Respondent* Answering, many Witnesses were Examin'd on Both Sides, touching the said *pretended Bond.*

1. *May*, 1702. The Cause was brought on to Hearing, when (after Opening of the Pleadings, and Nature of the Evidence against the said *pretended Bond*) the Right Honourable the *Lord Keeper* did not think fit to enter into the Merits, but directed a Tryal at Law, Whether this was *Tho. Scott*'s *Deed* or not, in the Action laid by the *Respondent* in *Shropshire*, to be had at the then next *Shrewsbury Assizes.*

In *Aug.* 1702. Preparations were made for that Tryal there: But it appearing that Attorneys, and Persons of greater Interest in that County, to the Number of between Twenty and Thirty, had been industriously solliciting, before the *Assizes*, for the *Respondent*; and that Papers of the *Respondent*'s writing, (in unjust Favour of his Cause) had been dispersed by him, to prepossess the People of that County; The *Appellant* was, for those Reasons only, advised not to Try the Merits then; and therefore insisted, That the Bond was not specified according to the Act of Parliament for Taxing Money at Interest: And the *Respondent* was thereupon Non-suit.

12. *Feb.* 1702. The *Appellant*, for the Reasons aforesaid, applied to have the Tryal in some other County, particularly in *Staffordshire*, where the Credit of the Parties and Witnesses was best known, all or most of them living there. But not prevailing to alter the County,

At Lent Assizes, 170$\frac{2}{3}$. The Cause was again, by the Direction of the Court of *Chancery*, Tryed at *Shrewsbury.* Upon which, the *Respondent* had a Verdict for the said *pretended Bond*; And

8. *May*, 1703. Thereupon the Cause was Heard in *Chancery*, and the Bill was Dismissd with 20 *l.* Costs. Whereupon the *Respondent* took out Execution for the whole Penalty of 1000 *l.* and Levied the same, though much more than what was really Due. But,

27. *Nov.* 1703. Upon a Re-hearing, that Matter was rectified, and only the Principal Summ of 200 *l.* with Interest, and the 20 *l.* without Interest, Ordered to be paid the 27th Day of *January* last; and if not then paid, the same to be paid in a Month after, with the Costs of the last Tryal, to be Taxed by a Master of the Court.

NOTE, That at the said Hearing, and Re-hearing, the *Appellant* (having Liberty so to do) moved for another Tryal, for these Reasons (amongst others,)

1*st.* For that there had been a Non-suit, on full Evidence, without any Objection to be made on the *Respondent*'s side to the Tryal; And considering the last Tryal at *Shrewsbury*, there had been only Verdict against Verdict on the Bond.

2*dly.* For that *Doleman*'s Bond, and the Letter of the 22d of *August*, 1699. which were very Material Pieces of Evidence, were not allowed to be Read, or Used, though they had been allowed at the former Tryals, and though Evidence was then offer'd of their being the *Respondent*'s Writing, and not the Testator *Scott*'s, and although at the first Tryal the Matter of that Bond and Letter was insisted upon by the *Respondent* himself.

3*dly.* For that the *Respondent*'s Witnesses varied materially from the Testimony they gave at the former Tryals: Which the *Appellant* was not admitted to Prove; because the Record of the *Postea* of the Non-suit in *Warwickshire*, offered in Evidence to prove the former Tryal, was disallowed as Evidence, which, by the Rules of Law, has usually been allowed in such Cases, the *Appellant* could not be admitted to Prove what was Sworn there.

4*thly.* For that the *Judge* who Try'd the Cause, was pleas'd to Sign a Certificate, wherein, in respect of the Nature and Length of the Evidence, and that the *Appellant* offered to Try the Cause at the Bar; and if it went against him, to pay the *Respondent* Bar-Costs; and if it went for him, to expect no Costs at all; he submitted it to the Consideration of the *Lord-Keeper*, Whether the Cause might not deserve a Re-examination by a Tryal at Bar.

Which Certificate, and several Affidavits relating to the said other Matters, were Read at the said Last Hearing, when the Motion was made for a New Tryal: But the *Lord-Keeper* did not think fit to Order another Tryal, or to enter further into the Merits of the Cause, or admit the *Appellant* to Read any Proofs, but made his final *Decree*, as aforesaid.

UPON which, and *upon the Whole, It is Humbly Insisted on,* That forasmuch as,

1*st.* The Verdict at the First Tryal being set aside by the Court of *Common-Pleas*, was never capable of being Entred upon Record, and so quite out of the Case.

2*dly.* At the Second Tryal, the Respondent was Non-suit, upon full Evidence.

3*dly.* The Third Tryal was not upon the Merits, but went off only for want of a Specification of the Bond, for the Reasons aforesaid.

4*thly.* The Last Tryal was not upon the Whole Evidence, nor upon a Full Defence.

And in Truth, the many Matters, Evidence and Circumstances in this Cause, were too Long for the Time allowed in a Circuit at the Assizes.

And the Concern being of such Value as near a *Thousand Pound*; and the Reputation of the Parties and Witnesses being much at Stake, and the Chief Matter on which the Cause depends;

IT is therefore Humbly Hoped, Another and Final Tryal *shall be Granted at the Bar, by a Jury of the County where the Parties and Witnesses are best known*; *And that This* CAUSE *may be thought Proper for such farther* Tryal, *as formerly in many other Causes wherein more Tryals have been had, and lately in the Cause of* Wharton *and* Tily, (*which after several* Tryals *before had, upon a farther Tryal Directed by this Most* HONOURABLE HOUSE, *the* Bond *then in question proved a* Forgery, *and is acquiesced under accordingly.*)

J. GROVE.

The Words of this BOND, Printed in **Black Letters**, are like the Words ſo Printed in the BOND in Queſtion.

TO *All Chriſtian People to whom theſe Preſents ſhall come, Greeting.* I Thomas Scott, of Great Barr, in the Pariſh of Aldridge, and County of Stafford, Gent. *being fully convinced, that through the Inſtigation of ſome ill People that prevail'd with me to Preſent a Perſon to the Parſonage of* Barr *and* Aldridge, *contrary to the Intent of my Loving Kinſman,* Nathanael Doalman, *late Rector of the afore-ſaid* Barr *and* Aldridge, *that I the ſaid* Thomas Scott, *in ſo doing, have greatly injured the Heirs of him the ſaid* Nathanael Doalman: *Wherefore, having a Free Eſtate of my own, out of which I ever reſolved to make full Amends unto all Perſons whom I have any way Injured; but being now far in Years, and grown Weak in Body, I am ſo hardly Dealt with, and ſo cloſely Tended by Some whom I ſhall forbear to name, that I cannot have the liberty to Diſpoſe of my Eſtate according to my own Will: And therefore I do here, in the Preſence of Almighty God, own and acknowledge my ſelf Indebted unto* Thomas Doalman, *Son and Heir of the afore-mention'd* Nathanael Doalman, **the full and juſt Summ of One Hundred Pounds, of Good and Lawful Money of** England, **to be paid to the ſaid** Thomas Doalman, *or his Aſſigns,* **within Six Months after my Deceaſe, with due Intereſt for the ſame from the Day of the Date hereof** *above-mention'd. And for the true and juſt Payment hereof, I the ſaid* Thomas Scott, **Do, by theſe Preſents, firmly Tie, Bind and Oblige my Heirs, Executors, Adminiſtrators and Aſſigns, and every of them, in the Penal Summ of Five Hundred Pounds,** *for the Payment of the above-mention'd* **Hundred Pound,** *of Lawful Money of* England: *And in* **Witneſs** *of the ſame, I have hereunto put* **this my own Hand and Seal,** *this Ninth Day of* October, *in the Sixth Year of the Reign of our Sovereign Lord and Lady,* William *and* Mary, *by the Grace of God, of* England, Scotland, France, *and* Ireland, *King and Queen, Defenders of the Faith,* Anno Domini, 1694.

THO. SCOTT.

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Edward Scott, *Gent. Appel'*

AGAINST

Richard Hilton, *Reſpond'*

THE

Appellant's CASE.

To be Heard the Day *of* February, 170¾.

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